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09/312,352	05/14/1999	ROBERT A. MACDONALD	KEY1019US	2481

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POPOVICH, WILES & O'CONNELL, PA
650 THIRD AVENUE SOUTH
SUITE 600
MINNEAPOLIS, MN 55402

EXAMINER

NEUDER, WILLIAM P

ART UNIT	PAPER NUMBER
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3672

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/312,352
Filing Date: May 14, 1999
Appellant(s): MACDONALD ET AL.

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GROUP 3600

Pursuant to the Remand under 37 CFR 1.193(b)(1) by the Board of Patent Appeals and Interferences on 9/27/04, a supplemental Examiner's Answer is set forth below: The supplemental response corrects the Examiner's answer by adding Sections (2) and (9).

Terry L. Wiles, Esq.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/9/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) Grouping of Claims

Appellant's brief includes a statement that claims 1 and 3-15 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,951,210	Maguire et al	9-1999
5,913,790	Dawson	6-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire et al in view of Dawson. This rejection is set forth in a prior Office Action, mailed on 10/8/03, Paper No. 24.

(11) Response to Argument

Applicant argues that (1) there is no suggestion to combine the Maguire and Dawson teachings and (2) Maguire and Dawson teach away from each other and away from the claimed invention. Applicant supports these arguments by stating that the Examiner either ignored the Board's direction or does not appreciate the extent to which Maguire's disclosure discourages such a substitution. Maguire acknowledges that pin-in-holes can be used to connect blocks but clearly teaches that pin-in-holes are not equivalent to knobs. In response, the Examiner did fully consider the Board's direction whether Maguire's teaching that eliminating the needs for pin-in-holes teaches away.

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The only teaching in Maguire to eliminate pins-in-holes is found in column 4, lines 44-51. these lines basically state, "preferably, oval knobs and elongated grooves eliminate the need for using pins, which can easily crack and destrpy the retaining walls". Maguire is seen to teach that knobs and grooves are an improvement over pins-in-holes; however, Maguire clearly teaches that prior art devices used pins-in-holes instead of knobs and grooves. Dawson clearly teaches (column 7, lines 16-37) that knobs and grooves are an alternative or equivalent means to pins-in-holes for securing blocks. It is believed that consideration of the two references together as a whole would not lead one of ordinary skill in the art to come to the conclusion that the block of Maguire would be destroyed but in fact to just the opposite, that the block of Maguire could be formed with either pins-in-holes or knobs and grooves. In fact, it appears that applicant's invention is a step backwards in the art, and sets forth Maguire's block with pins-in-holes instead of knobs and grooves. The Examiner agrees that Maguire clearly teaches that knobs and grooves are an improvement over pins-in-holes. However, just because it is an improvement does not mean that using pins-in-holes would destroy the block of Maguire. Maguire's block having pins-in-holes would work in exactly the same manner as it does having knobs and grooves. Applicant further argues that Maguire and dawson taken together do not support the broad proposition that knobs and grooves are equivalent to pins-in-holes in this art area. While it is felt that Maguire teaches that pins-in-holes and knobs and grooves are equivalent, Dawson clearly states this in column 7. Applicant argues that the claim 3 limitation that "first and second planes of symmetry...located approximately midway...". The block to Maguire is

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essentially the same block claimed and as pointed out in the previous office action and Examiner's answer, a plane through the knobs 32 goes through the neck portion and the grooves 30 parallel to the plane of symmetry. The Board also pointed out in their last decision that Maguire is considered to meet the limitations of symmetry. Since the block of Maguire is essentially the same as the claimed block except for the use of knobs and grooves instead of pin-in-holes, if it would be obvious to substitute the pins-in-holes of Dawson for the knobs and grooves of Maguire, the arrived at combination would inherently meet these limitations of symmetry. This also holds true for the claim 4 limitations of symmetry. As to claim 5, the final rejection sets forth that both Maguire and Dawson contain a second set of pins-in-holes for Dawson and a second set of knobs and grooves for Maguire. Again, the limitations to symmetry are felt to be met since the block of Maguire is essentially the same as the block claimed. With respect to claim 6, applicant argues that Dawson does not have this feature. While this is true, Maguire is the primary reference and shows this feature as stated by applicant in the brief on page 13 5 lines from the bottom. With respect to claim 7, applicant argues that neither reference teach having ears with grooves which can be easily knocked off. However, applicant does not address the actual rejection made that states that the use of notches in blocks to easily break the block is old and well known. See the final rejection for a more detailed explanation of the rejection of claim 7. With respect to claims 8 and 9, applicant argues that Dawson does not teach these features and that Maguire may show these features, there is no reasoning why it would be obvious to incorporate these features of Maguire into Dawson. Again, Maguire is the primary

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reference and discloses these features as stated by applicant and is not incorporated into Dawson. As to claims 10 and 11, applicant argues that placing Dawson knobs on the Maguire block would render Maguire inoperative. First, Dawson does show in Figures 11 and 12, pins-in-holes being used in curved walls. Therefore, how would using pins-in-holes in Maguire make Maguire inoperative? Also, I am replacing the knobs and grooves of Maguire with pins-in-holes from Dawson not using Dawson's knobs. As to claim 14, applicant argues that neither Maguire or Dawson teach the use of geogrid. Clearly, Maguire teaches this as well as Dawson with respect to the prior art figures described. The fact that Maguire does not use pins-in-holes is not material since I am using Dawson to teach this.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



William P Neuder
Primary Examiner
Art Unit 3672

W.P.N.

November 10, 2004

Conferees

H.S.

D.B.



TERRY L WILES
POPOVICH & WILES PA
SUITE 1902 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2111